A

Datuk Seri Ahmad Said Hamdan, Ketua Suruhanjaya, Suruhanjaya Pencegah Rasuah Malaysia & Ors v Tan Boon Wah

B

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01–393 OF 2009
HASAN LAH, AHMAD MAAROP AND SYED AHMAD HELMI JJCA
4 FEBRUARY 2010

C

Constitutional Law — Fundamental liberties — Personal liberty — Examination or interrogation of persons — Examination for purposes of investigations under the Malaysian Anti-Corruption Commission Act 2009 —
D *Whether examination ought to be conducted during office hours only — Whether examination may be conducted after office hours, continuously and without interruption — Malaysian Anti-Corruption Commission Act 2009 s 30(3)(a)*

E *Criminal Procedure — Police investigation — First information report — Whether investigator obliged to commence investigations as soon as he receives information about crime — Whether promptness in investigation of serious offences of great importance — Whether promptness in investigation of serious offence has effect on credibility of witness*

F

Criminal Procedure — Witness — Examination or interrogation of — Examination of witness for purposes of investigations under the Malaysian Anti-Corruption Commission Act 2009 — Whether examination ought to be
G *conducted during office hours only — Whether examination may be conducted after office hours, continuously and without interruption — Malaysian Anti-Corruption Commission Act 2009 s 30(3)(a)*

H *Statutory Interpretation — Construction of statutes — Literal approach — Whether courts ought to give effect to plain words in legislation — Whether courts ought to look for natural or ordinary meaning of words or phrases in legislation*

I *Statutory Interpretation — Construction of statutes — Purposive approach — Malaysian Anti-Corruption Commission Act 2009 — Whether 'person' under s 30(1)(a), (3)(a) refers to both witness and suspect — Whether order under s 30(1)(a) may be a verbal order — Whether person may be required to attend for purposes of examination after office hours — Whether person may be required to attend from day to day until examination is completed — Whether any*

restrictions placed on timing of examinations — Malaysian Anti-Corruption Commission Act 2009 s 30(1)(a) & (3)(a) — Interpretation Acts 1948 and 1967 s 37

Statutory Interpretation — Construction of statutes — Purposive approach — Whether provisions in a statute ought to be construed in a way that promotes object of the Act — Interpretation Acts 1948 and 1967 s 17A

Words and Phrases — 'from day to day' — Malaysian Anti-Corruption Commission Act 2009 s 30(3)(a) — Whether 'day to day' meant continuously or without interruption

Words and Phrases — 'person' — Malaysian Anti-Corruption Commission Act 2009 s 30(1)(a) and (3)(a) — Whether 'person' under s 30(1)(a), (3)(a) refers to both witness and suspect

The plaintiff was called to assist the third defendant ('MACC') in investigations into an alleged offence involving the abuse of state constituency funds. On 15 July 2009, at 8.45pm, the plaintiff was taken out from his house by MACC officers to the MACC office. There, the plaintiff was questioned from 9.45pm that night (15 July) right until 2.53am the next day (16 July). The plaintiff subsequently sued the defendants for damages in respect of false imprisonment, and sought various declarations. He sought a declaration that the defendants, who were investigating under s 30(1)(a) of the Malaysian Anti-Corruption Commission Act 2009 ('MACC Act'), could record statements from a witness during office hours only, that is from 8.30am until 5.30pm. The plaintiff further sought a declaration that the defendants had contravened s 30(3)(a) of the MACC Act. In the High Court, the judge was of the view that since the plaintiff's application concerned the liberty of the person, a strict and literal approach could not be adopted when construing the relevant parts of the MACC Act. According to the High Court judge, statutory provisions affecting fundamental liberties had to be read broadly in the light of the relevant constitutional provisions. There had to be less room for literalism, but greater scope for 'a rights oriented' approach to interpretation. The judge concluded that the phrase 'from day to day' in s 30(3)(a) of the MACC Act could not mean an unending 24-hour day, and the term 'day' had to relate to normal working hours. Therefore, MACC investigating officers could only record statements from witnesses during office hours, namely from 8.30am to 5.30pm each day. The plaintiff thus obtained the declarations prayed for. The defendants appealed to the Court of Appeal. The main issue before the Court of Appeal was whether under

s 30(3) of the MACC Act, a person to whom an order had been given under s 30(1)(a) of the MACC Act could be examined only during office hours.

Held, allowing the defendants' appeal with costs here and below:

(1) The Court of Appeal could not agree with the High Court judge's 'rights oriented' approach to interpretation. It is important for the courts to give effect to the plain words in legislation. In determining the meaning of any word or phrase in a statute, the first question to ask is what the natural or ordinary meaning of that word or phrase in its context in the statute is. It is only when that meaning leads to some result that cannot reasonably supposed to have been the intention of the Legislature that it is proper to look for some other possible meaning of the word or phrase. It is wrong and dangerous to proceed by substituting some other words for the words of the statute (see paras 11–12); *R v IRC, ex parte Rossminster* [1980] AC 952 followed; *Pinner v Everett* [1969] 3 All ER 257 followed; *Tenaga Nasional Bhd v Ong See Teong & Anor* [2010] 2 MLJ 155 followed; *Lee Kwan Woh v Public Prosecutor* [2009] 5 MLJ 301 distinguished.

(2) In construing a provision in an Act, pursuant to s 17A of the Interpretation Acts 1948 and 1967, what must prevail is a construction that promotes the purpose of the Act (see para 14); *Tenaga Nasional Bhd v Ong See Teong & Anor* [2010] 2 MLJ 155 followed; *Saraswati v R* (1991) 100 ALR 193 followed.

(3) In construing s 30(3)(a) of the MACC Act, it is necessary to read together s 30(1)(a) of the same Act. The word 'person' in s 30(1)(a) and 30(3)(a) includes both witness and suspect. Thus, a person who may be ordered to attend pursuant to s 30(1)(a), and who is obliged to continue to attend under s 30(3)(a) may be a witness and/or a suspect. The order under s 30(1)(a) need not be in writing — it may be a verbal order (see paras 18–20).

(4) Section 30(3)(a) of the MACC Act consists of two parts. It is a necessary extension of s 30(1)(a) of the MACC Act. Section 30(1)(a) of the MACC Act empowers a MACC officer to order any person to attend before him for the purpose of being examined. When an order is given under that s 30(1)(a), the first part of s 30(3)(a) creates a legal obligation on the person to whom the order has been given, to attend to be examined, according to the terms of the order. The terms of the order includes the time during which that person must attend. The time is to be fixed by the MACC officer. There is no restriction that the officer fix the time for examination only during office hours. The second part of s 30(3)(a) of the MACC Act empowers the MACC officer to direct that person to continue to attend from day to day until the examination is completed. Mandatory compliance with the order

given under s 30(1)(a) of the MACC Act and under s 30(3) of the Act, is reinforced by s 30(6) of the MACC Act. There is no restriction under s 30(3)(a) or 30(1)(a) concerning the fixing of the time for attending an examination (see para 21).

(5) The effect of interplay between s 30(1)(a), 30(3) of the MACC Act and s 37 of the Interpretation Acts 1948 and 1967 is that an officer of the MACC investigating an offence may order any person to attend before him at any time, for the purpose of being examined orally in relation to any matter which may, in his opinion, assist in the investigation into an offence. The person ordered to attend shall attend at such time and place as ordered by the officer of the MACC. There is no restriction that the person must be ordered to attend only during office hours. The MACC officer may direct the person who has attended, to continue to attend from day to day until the examination is completed. There is no restriction that 'from day to day' attendance must be within office hours only (see para 22).

(6) The phrase 'from day to day' means continuously or without interruption from one 24-hour day to another. The High Court judge was thus wrong when he held the phrase 'from day to day' could not mean an unending 24 hour day, and that the word 'day' had to relate to normal working hours, viz 8.30am to 5.30pm. The judge had read into s 30(3)(a) of the MACC Act a restriction which was not intended by the Legislature to be there. The interpretation by the High Court judge was absurd and did not promote the purposes of the MACC Act (see para 22).

(7) The purpose of the MACC Act is to make further and better provisions for the prevention of corruption. The detection and investigation of offences under the MACC Act and the bringing of persons accused of any such offences to justice is also clearly an inseparable, intended object of the MACC. The power prescribed under s 30 of the MACC Act — the power to examine and record statements from persons who may assist in investigations — is a power that must be exercised promptly (see para 23).

(8) An investigator is obliged to commence investigations as soon as he receives information about the crime. Indeed, promptness in the investigation of serious offences, including offences under the MACC Act, is of utmost importance. Prompt interrogation lends assurance to the court about the credibility of a witness and goes a long way to dispel doubts in the mind of the court concerning the witness (see paras 24 & 26); *Amrik Singh v The State of Punjab* 1983 Cri LJ 1405 referred; *GB Patel v State of Maharashtra* AIR 1979 referred; *Kehar Singh v State (Delhi Administration)* (1988) 3 Supreme Court Cases 609 referred; *Janardhan Ragho Mhatre v State of Maharastra* 1996 Cr LJ 4180

A referred; *Ooi Ah Phua v Officer-in-Charge Criminal Investigation, Kedah/Perlis* [1975] 2 MLJ 198 (FC) followed; *Hashim bin Saud v Yahaya b Hashim & Anor* [1977] 2 MLJ 116 referred.

[Bahasa Malaysia summary

B Plaintif telah dipanggil untuk membantu defendan ketiga ('MACC') dalam siasatan tentang kesalahan yang dikatakan melibatkan penyalahgunaan dana kawasan pilihan raya. Pada 15 Julai 2009, pada pukul 8.45 petang, plaintif telah dibawa keluar dari rumahnya oleh pegawai-pegawai MACC ke pejabat MACC. Di sana, plaintif telah disoal dari pukul 9.45 malam pada malam itu C (15 Julai) sehingga 2.53 pagi keesokan harinya (16 Julai). Plaintif kemudian telah menyaman defendan-deefndan untuk ganti rugi kerana tahanan palsu dan memohon beberapa deklarasi. Dia memohon deklarasi agar defendan-defendan, yang menyiasat di bawah s 30(1)(a) Akta Suruhanjaya Pencegahan Rasuah 2009 di Malaysia ('Akta MACC'). Di Mahkamah Tinggi D hakim berpendapat bahawa memandangkan permohonan plaintif berkaitan kebebasan seseorang, pendekatan yang tegas dan harfiah tidak boleh terpakai apabila mentafsirkan bahagian-bahagian relevan kepada Akta MACC. Menurut hakim Mahkamah Tinggi, peruntukan statutori yang melibatkan E kebebasan asasi hendaklah dibaca secara umum berdasarkan peruntukan-peruntukan perlembagaan yang relevan. Pendekatan secara harfiah patut dikurangkan dan skop untuk pendekatan 'a rights-oriented' terhadap pentafsiran patut ditekankan. Hakim membuat kesimpulan bahawa frasa 'from day to day' dalam s 30(3)(a) Akta MACC tidak bermaksud 24 jam sehari yang berterusan, dan istilah 'day' perlu dikaitkan kepada waktu kerja F yang biasa. Oleh itu, pegawai-pegawai MACC hanya boleh merekodkan kenyataan daripada saksi semasa waktu kerja, iaitu dari pukul 8.30 pagi hingga 5.30 petang setiap hari. Plaintif dengan itu dapat memperoleh deklarasi-deklarasi yang dipohon. Defendan-defendan telah merayu ke Mahkamah Rayuan. Isu utama di hadapan Mahkamah Rayuan adalah sama G ada di bawah s 30(3) Akta MACC, seseorang yang telah diberikan arahan di bawah s 30(1)(a) Akta MACC hanya boleh disoal siasat semasa waktu pejabat sahaja.

H **Diputuskan**, membenarkan rayuan defendan-defendan dengan kos di mahkamah ini dan Mahkamah Tinggi:

(1) Mahkamah Rayuan tidak bersetuju dengan pendekatan 'rights-oriented' hakim Mahkamah Tinggi terhadap pentafsiran. Adalah penting untuk mahkamah memberi kesan terhadap I perkataan-perkataan yang jelas dalam perundangan. Dalam menentukan maksud apa-apa perkataan atau frasa dalam statut, soalan pertama yang perlu ditanyakan adalah apakah maksud semula jadi atau biasa perkataan atau frasa tersebut dalam konteksnya dalam statut tersebut. Hanya jika maksudnya membawa kepada akibat yang tidak

mungkin sepertimana yang diniatkan oleh badan perundangan maka adalah wajar untuk mencari maksud lain yang bersesuaian bagi perkataan atau frasa itu. Adalah salah dan bahaya untuk meneruskannya dengan menggantikan beberapa perkataan lain untuk perkataan-perkataan statut tersebut (lihat perenggan 11–12); *R v IRC, ex parte Rossminster* [1980] AC 952; *Pinner v Everett* [1969] 3 All ER 257 dan *Tenaga Nasional Bhd v Ong See Teong & Anor* [2010] 2 MLJ 155 diikut; *Lee Kwan Woh v Public Prosecutor* [2009] 5 MLJ 301 dibeza.

(2) Dalam mentafsirkan peruntukan dalam suatu Akta, menurut s 17A Akta Tafsiran 1948 dan 1967, apa yang perlu wujud adalah pentafsiran yang mencapai tujuan Akta tersebut (lihat perenggan 14); *Tenaga Nasional Bhd v Ong See Teong & Anor* [2010] 2 MLJ 155 dan *Saraswati v R* (1991) 100 ALR 193 diikut.

(3) Dalam mentafsirkan s 30(3)(a) Akta MACC, adalah perlu untuk membaca bersama s 30(1)(a) Akta yang sama. Perkataan 'person' dalam s 30(1)(a) dan 30(3)(a) termasuklah kedua-dua saksi dan orang yang disyaki. Oleh itu, seseorang yang mungkin diarahkan untuk hadir menurut s 30(1)(a), dan yang diwajibkan untuk terus hadir menurut s 30(3)(a) boleh menjadi saksi dan/atau orang yang disyaki. Arahan di bawah s 30(1)(a) tidak perlu secara bertulis — ia boleh merupakan arahan secara lisan (lihat perenggan 18–20).

(4) Seksyen 30(3)(a) Akta MACC mengandungi dua bahagian. Ia adalah lanjutan kepada s 30(1)(a) Akta MACC. Seksyen 30(1)(a) Akta MACC memberi kuasa kepada pegawai MACC untuk mengarahkan seseorang untuk hadir di hadapannya bagi tujuan soal siasat. Apabila arahan diberikan di bawah s 30(1)(a), bahagian pertama kepada s 30(3)(a) membentuk kewajipan sah ke atas seseorang yang telah diberikan arahan itu, untuk hadir agar disoal siasat, menurut terma-terma arahan itu. Terma-terma arahan itu termasuklah masa seseorang itu perlu hadir. Masa itu ditetapkan oleh pegawai MACC. Tiada sekatan agar pegawai itu menetapkan masa untuk soal siasat hanyalah semasa waktu kerja. Bahagian kedua kepada s 30(3)(a) Akta MACC memberi kuasa kepada pegawai MACC untuk mengarahkan seseorang itu untuk terus hadir dari hari ke sehari sehinggalah siasatan selesai. Pematuhan mandatori dengan arahan yang diberikan di bawah s 30(1)(a) Akta MACC dan di bawah s 30(3) Akta, diperkuatkan lagi oleh s 30(6) Akta MACC. Tiada sekatan di bawah s 30(3)(a) atau 30(1)(a) berkaitan penetapan masa untuk menghadiri suatu pemeriksaan (lihat perenggan 21).

(5) Kesan yang saling mempengaruhi antara s 30(1)(a), 30(3) Akta MACC dan s 37 Akta Tafsiran 1948 dan 1967 ialah seorang pegawai MACC yang menyiasat tentang kesalahan itu boleh mengarahkan sesiapa untuk hadir di hadapannya pada bila-bila masa, bagi tujuan diperiksa secara lisan berkaitan dengan apa-apa perkara yang mungkin, pada

pendapatnya, membantu dalam siasatan terhadap suatu kesalahan. Seseorang yang diarahkan untuk hadir hendaklah hadir pada masa dan tempat tertentu sepertimana yang diarahkan oleh pegawai MACC. Tiada sekatan yang seseorang itu perlu diarahkan untuk hadir hanya pada waktu kerja sahaja. Pegawai MACC boleh mengarahkan seseorang yang hadir, untuk terus menghadirkan diri dari hari ke hari sehingga pemeriksaan selesai. Tiada sekatan bahawa kehadiran 'from day to day' perlulah dalam waktu kerja sahaja (lihat perenggan 22).

(6) Frasa 'from day to day' bermaksud 24 jam dalam sehari ke hari lain secara berterusan atau tanpa gangguan. Hakim Mahkamah Tinggi dengan itu telah terkhilaf apabila beliau memutuskan yang frasa 'from day to day' tidak mungkin bermaksud 24 jam sehari yang berterusan, dan bahawa perkataan 'day' perlu dikaitkan dengan waktu bekerja biasa iaitu 8.30 pagi hingaa 5.30 petang. Hakim telah membaca s 30(3)(a) Akta MACC suatu sekatan yang tidak diniatkan oleh badan perundangan untuk wujud. Pentafsiran oleh hakim Mahkamah Tinggi tidak masuk akal dan tidak mencapai tujuan Akta MACC (lihat perenggan 22).

(7) Tujuan Akta MACC adalah untuk menggubal peruntukan-peruntukan yang lanjut dan jelas untuk mencegah rasuah. Pengesanan dan siasatan terhadap kesalahan-kesalahan di bawah Akta MACC dan membawa tertuduh-tertuduh untuk kesalahan-kesalahan sebegini ke muka pengadilan juga jelas menunjukkan maksud tujuan MACC yang tidak boleh dipisahkan. Kuasa yang ditetapkan di bawah s 30 Akta MACC — kuasa untuk memeriksa dan merekodkan kenyataan-kenyataan mereka yang boleh membantu dalam siasatan — adalah kuasa yang perlu digunakan dengan segera (lihat perenggan 23).

(8) Seorang penyiasat diwajibkan memulakan siasatan sejurus selepas menerima maklumat tentang suatu jenayah. Sememangnya, kesegeraan dalam menyiasat kesalahan-kesalahan serius di bawah Akta MACC amat penting. Soal siasat yang dilakukan dengan segera memberi keyakinan kepada mahkamah tentang kebolehpercayaan saksi dan boleh melenyapkan apa-apa keraguan mahkamah tentang saksi tersebut (lihat perenggan 24 & 26); *Amrik Singh v The State of Punjab* 1983 Cri LJ 1405; *GB Patel v State of Maharashtra* AIR 1979 SC 135; *Kehar Singh v State (Delhi Administration)* (1988) 3 Supreme Court Cases 609; *Hashim bin Saud v Yahaya bin Hashim & Anor* [1977] 2 MLJ 116 dan *Janardhan Ragho Mhatre v State of Maharastra* 1996 Cr LJ 4180 dirujuk; *Ooi Ah Phua v Officer-in-Charge Criminal Investigation, Kedah/Perlis* [1975] 2 MLJ 198 (MP) diikut.]

Notes

For cases on first information report, see 5 *Mallal's Digest* (4th Ed, 2010 Reissue) paras 2758–2765.

For cases on literal approach, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1884–1910.
For cases on personal liberty, see 3 *Mallal's Digest* (4th Ed, 2007 Reissue) paras 2150–2160.
For cases on purposive approach, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1952–2009.
For cases on witness generally, see 5 *Mallal's Digest* (4th Ed, 2007 Reissue) paras 5108–5113.

Cases referred to

AE Beavis v Foo Chee Fong [1938] MLJ 129, HC (refd)
Amrik Singh v The State of Punjab 1983 Cri LJ 1405 (refd)
Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 2 KB 403; 90 LJ KB 461; 125 LT 108, CA (refd)
Dato Mokhtar bin Hashim & Anor v PP [1983] 2 MLJ 232, FC (refd)
E Gopal & Anor v Awang bin Mona [1978] 2 MLJ 251, HC (refd)
GB Patel v State of Maharashtra AIR 1979 SC 135 (refd)
Hashim bin Saud v Yahaya bin Hashim & Anor [1977] 2 MLJ 116, FC (refd)
Janardhan Ragho Mhatre v State of Maharastra 1996 Cr LJ 4180 (refd)
Kehar Singh v State (Delhi Administration) (1988) 3 Supreme Court Cases 609 (refd)
Lee Kwan Woh v PP [2009] 5 MLJ 301; [2009] 5 CLJ 631, FC (distd)
Ooi Ah Phua v Officer-in-Charge Criminal Investigation, Kedah/Perlis [1975] 2 MLJ 198, FC (folld)
Pinner v Everett [1969] 3 All ER 257, HL (folld)
PP v Lee Chee Meng & Anor [1991] 1 MLJ 226, HC (refd)
R v IRC, ex parte Rossminster Ltd [1980] AC 952, HL (folld)
Saraswati v R (1991) 100 ALR 193, HC (folld)
Tenaga Nasional Bhd v Ong See Teong & Anor [2010] 2 MLJ 155, FC (folld)

Legislation referred to

Courts of Judicature Act 1964 s 92
Criminal Procedure Code s 180(1)
Electricity Supply Act 1990 s 13
Federal Constitution art 5(1), (3)
Interpretation Acts 1948 and 1967 ss 17A, 37, 37A
Lock-up Rules 1953 r 20
Malaysian Anti-Corruption Commission Act 2009 ss 9, 30(1)(a), (1)(b), (c), (d), (3), (3)(a), (4), (5), (6), (7), (8), (9), (10), 68, 72, Part V
Rules of the Supreme Court 1980 (Repealed) Schedule C item 189
Taxes Management Act 1970 [UK] s 20C

Appeal from: Originating Summons No R3–24–42 of 2009 (High Court, Kuala Lumpur)

Amarjit Singh (Senior Federal Counsel, Attorney General's Chambers) for the appellants.
Karpal Singh (Karpal Singh & Co) for the respondent.

Ahmad Maarop JCA:

BRIEF FACTS OF THE CASE

[1] Acting on information received, the third appellant, the Malaysian Anti-Corruption Commission ('MACC'), commenced investigation in connection with an offence concerning the use of false details in applications for State Constituency Funds which were submitted to district offices, for the purpose of carrying out activities in Kawasan ADUN Selangor. In the course of the said investigation, on 15 July 2009, a team of MACC officers made a search at the respondent's house. One of the companies being investigated was a company called Merit Link Enterprise. According to the affidavit in reply filed by the appellants, since Merit Link Enterprise was registered in the name of the respondent's wife, the MACC officers requested her to come to MACC office for further investigation. The respondent, who was together with his wife at the material time, offered to go to MACC's office in place of his wife. The respondent then followed the MACC officers back to MACC office at Shah Alam. In his supporting affidavit, the respondent said that on the direction of the MACC officers, he was taken from his house and required to attend the MACC office at 8.45pm on 15 July 2009. There was therefore a dispute as to how the respondent came to be at the MACC office. However, even from the appellant's affidavit in reply, it appears that the respondent was examined from 9.45pm on 15 July 2009 until 2.53am on 16 July 2009. The respondent was allowed to leave the MACC office at 2.50am but chose to remain there until the morning of 16 July 2009, to wait for his wife who allegedly would be bringing the relevant documents with her.

[2] On 22 July 2009, the respondent, being disgruntled with what he had undergone between 8.45pm on 15 July 2009 and 2.53am on 16 July 2009, as aforesaid, filed an originating summons praying for the following orders:

(a) a declaration that pursuant to s 30(1)(a) of the Malaysian Anti-Corruption Commission Act 2009 ('the MACC Act') an investigating officer can only record a statement of a witness during office hours, namely 8.30am to 5.30pm each day and not at any other time;

(b) a declaration that the appellants had acted in contravention of the provisions of s 30(3)(a) of the MACC Act;

(c) damages (including exemplary and aggravated damages) for false imprisonment;

(d) interest on the adjudged sum on such rates and for such periods deemed fit and proper by the honourable court;

(e) an inquiry by the senior assistant registrar, High Court Kuala Lumpur to determine the damages the plaintiff is entitled to; and

(f) costs.

[3] On 19 November 2009, the High Court allowed the respondent's application and made the following declaration:

(a) that pursuant to s 30(1)(a) of the MACC Act an investigating officer can only record a statement of a witness during office hours, namely 8.30am to 5.30pm each day and not at any other time;

(b) that the appellants had acted in contravention of the provisions of s 30(3)(a) of the Act;

Following the said declaration, the High Court also allowed the respondent's application in terms of prayers (4), (5) and (6) of the origination summons. As indicated by the learned judge in his judgment in the court below, the respondent had agreed to limit his claim to the period from 9.45pm on 15 July 2009 to 2.30am on 16 July 2009. The claim for exemplary and aggravated damages was also abandoned by the respondent.

[4] Being dissatisfied with the aforesaid decision of the High Court, the appellants preferred an appeal to this court.

THE APPELLANTS' SUBMISSION

[5] Learned senior federal counsel ('SFC') contended that the interpretation of s 30(3)(a) of the MACC Act by the learned judge in the court below was wrong, and that on its true interpretation the section did not restrict examination of witnesses to normal working hours only. He submitted that the learned judge's interpretation of s 30(3)(a) was flawed as he had interpreted the whole section conjunctively and not disjunctively. Learned SFC submitted that s 30(3)(a) was made up of two parts. According to him the first part was, 'Any person to whom an order has been given under paragraph (1)(a) shall attend in accordance with the terms of the order to be examined'. The second part was '... shall continue to attend from day to day where so directed until the examination is completed'. He argued that the presence of 'comma' and the conjunction 'and' after the first part of the section called for disjunctive reading of s 30(3). Elaborating on this point, learned SFC contended that it was the first part of the subsection, namely,

'shall attend in accordance with the terms of the order to be examined' that set the time of the examination and not the second part. He said even accepting that the ordinary dictionary meaning of the phrase 'day to day' to be 'on a daily basis' as found by the learned judge, it was clear that the second part of the section meant that, if the initial examination could not be completed, then the person examined shall continue to attend on a daily basis until examination was completed. According to him, there was nothing in the second part of the section to restrict examination hours to only normal working hours. Learned SFC submitted that the material words in s 30(3)(a) were '*from day to day*' and not merely '*day to day*'. He said that the meaning of the phrase 'from day to day' given in the *Shorter Oxford Dictionary* (5th Ed, Vol 1) was 'continuously or without interruption from one day to another'. He submitted that this meaning in the context of s 30(3)(a) was in accord with the construction that the examination of a witness could be conducted at any time of the day and continue without interruption to the next day.

[6] Continuing his submission, learned SFC submitted that the proper approach in interpreting s 30(3)(a) necessitated the application of s 17A of the Interpretation Acts 1948 and 1967 (Act 388) which required that the interpretation that would promote the purpose or object of the Act be preferred. He argued that the purpose of the Act was to combat corruption effectively, and the investigative function was a crucial element in achieving this purpose, and since that purpose was to serve the general interest of the public, the balance of convenience in favour of the public must be looked at more widely. Learned SFC further argued that effective investigative function promoted the purpose or object of the Act. He submitted that the importance accorded to investigative function could be seen in the interpretation of art 5(3) of the Federal Constitution concerning the 'right to counsel' in respect of which, the apex court in this country had always recognised the importance of investigation as being in the interest of the public and the interest of justice even when the fundamental rights of an individual was affected. Learned SFC argued that although the court held that the right to counsel began at the time of arrest, it was postponed to a reasonable time so as not to impede police investigation. He submitted that the examination of a witness at any time whenever the occasion arose would promote the purpose or the object of the MACC Act. He argued that offences under the MACC Act could be committed at any time, and investigation must be done immediately. He submitted that it would be absurd to say that investigation could only be done during office hours. In this connection learned SFC referred to s 37A of Act 388 which provided that 'when a written law confers a power that power may be exercised and performed from time to time as the occasion requires'. He contended that s 30(1)(a) read with s 30(3)(a) conferred a power on the officer investigating an offence to require the attendance of any person to assist in the investigation, and that the matter was left to the discretion of the officer so that examination of a witness would

take place as and when the occasion required.

THE RESPONDENT'S SUBMISSION

[7] The substance of the submission of learned counsel for the respondent is that in interpreting s 30(3)(a) of the MACC Act, there was no need to resort to s 17A of Act 388. He submitted that s 30(3) of the MACC Act was so clear that there was no need to resort to canons of interpretation. He argued that s 30(1)(a) must be read with s 30(3)(a) of the MACC Act, and that the latter could not be read disjunctively. He contended that 'from day to day' means normal working hours. In support of his submission he relied on *AE Beavis v Foo Chee Fong* [1938] MLJ 129 where it held that in allowances for attendances in court for a 'day' (item 189 in Schedule C to the Rules of the Supreme Court 1980) a day covered the normal sitting of the court from 10.30 or 11am to 4pm. He submitted that the proposition in that case supported the rationale in requiring the hours of court to be the formula in the interpretation of the phrase 'from day to day' under s 30(3)(a) of the MACC Act.

[8] Continuing his submission, learned counsel referred to r 20 of the Lock-up Rules 1953 which stated that 'Banduan-banduan akan dikurung pada waktu malam pada pukul 6.30 petang dan akan bangun siap berpakaian pada pukul 6.30 pagi'. Learned counsel then referred to *Dato Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232, where according to him, a statement recorded after a prolonged period of interrogation at extremely odd hours going into the early hours of the morning in breach of the Lock-up Rules was held by the Federal Court to be involuntary and, therefore, inadmissible. He said likewise in *Public Prosecutor v Lee Chee Meng & Anor* [1991] 1 MLJ 226, the first accused's cautioned statement was held inadmissible as it was not made voluntarily as he had been subjected to threats and beatings and that the police had not observed the Lock-up Rules. Learned counsel argued that if r 20 of the Lock-up Rules had strict application in relation to suspects in that suspects were beyond reach of interrogation between 6.30pm and 6.30am, it could not be fathomed how witnesses could be questioned after office hours. He submitted that witnesses should be entitled to more protection than suspects. Learned counsel then referred to the purpose of enacting s 30(3) of the MACC Act and submitted:

> What has to be borne in mind in the interpretation of section 30(3) is the purpose of its enactment. It goes without saying what was intended was there be collection of reliable evidence from witnesses in the course of an MACC investigation which was legislated to rid the country of the scourge of corruption. On the other hand, any conviction must be on the basis of evidence from witnesses whose mind was fresh when questioned, and not a product of sustained and relentless questioning of a witness depriving him of sleep and thereby compromising the quality of his

evidence. Sapping of the will of a witness by interrogating officers could never have been the intention of Parliament. Evidence should not be obtained through wile and guile, but through ingenuity of officers questioning a witness. Courts expect the best evidence and procedures towards procuring that evidence should, and must, conform to terms which are acceptable. The phrase 'day to day' must, therefore, be construed in the context of the foregoing propositions.

Concluding his submission, learned counsel argued that 'from day to day' could not mean round the clock. He submitted that the decision of the learned judge in the court below, was logical and supported by authority.

DECISION OF THE COURT BELOW

[9] Explaining the court's function in interpretation of statute, the learned judge in the court below opined that as the application before him concerned liberty of person, it would be unwise to relegate the subject matter and treat the court's interpretive function as if the court were looking at an ordinary commercial case, much worse, a revenue matter as was the case in *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 2 KB 403; 90 LJ KB 461; 125 LT 108. The learned judge said that the approach adopted in cases such as *Cape Brandy Syndicate* to the effect that one 'cannot add words in the statutes or read words into it which are not there', and that 'nothing is to be read, nothing is to be implied, one can only look fairly at the language used', would not be appropriate when interpreting a statutory provision touching and concerning fundamental liberties. In the learned judge's view, as a matter of principle, a statutory provision affecting fundamental liberties must be read broadly in the light of the relevant constitutional provisions, and that there was less room for literalism, but greater scope for 'a rights oriented approach' to interpretation. According to the learned judge, that had to be the position since it could not be the presumed intention of Parliament to enact a law that violated personal liberty. The learned judge said that in any mature constitutional system, if there was any ambiguity in the law, that ambiguity should be resolved in support of fundamental liberties, rather than the contrary. According to the learned judge, if the court were to agree with the submission urging it to adopt a literal approach, it would mean sliding back to an era long past. In support of his approach the learned judge cited *Lee Kwan Woh v Public Prosecutor* [2009] 5 MLJ 301; [2009] 5 CLJ 631. He concluded that 'from day to day' could not mean unending 24 hour day, and 'day' must relate to normal working hours. Consequently, he granted the declarations prayed for by the respondent which we adverted to earlier in this judgement that s 30(1)(a) of the MACC Act, an investigating officer can only record a statement of a witness during office hours, namely 8.30am to 5.30pm each day and at any other time. The decision of the learned judge would also inevitably mean that statements of witnesses could not be recorded on weekends (ie Fridays and Saturdays in Kedah, Kelantan and

Terengganu and Saturdays and Sundays everywhere else in Malaysia) and public holidays.

ISSUE

[10] The issue which lies at the heart of this appeal is whether under s 30(3) of the MACC Act, a person to whom an order has been given under s 30(1)(a) of the MACC Act can be examined only during office hours.

DECISION OF THE COURT

[11] The thrust of the learned judge's reasoning seems to be that as a matter of principle, a statutory provision affecting fundamental liberties must be read broadly in the light of the relevant constitutional provision and that there should be less room for literalism, but greater scope for 'a rights oriented approach' to interpretation. We regret to say we are unable to agree with him. The attitude of the court when faced with the interpretation of legislation which affects the right of the citizens was explained in *R v IRC, ex parte Rossminster Ltd* [1980] AC 952, where the House of Lords had to consider the powers of entry into private home by revenue officers pursuant to a warrant issued under s 20C of the Taxes Management Act 1970. Although the courts have the duty to supervise jealously the exercise of such powers, it is no part of their duty to restrict or impede the working of the legislation. This is how Lord Wiberforce explained it in his judgment:

> The courts have the duty to supervise, I would say critically, even jealously, the legality of any purported exercise of these powers. They are the guardians of the citizens' right to privacy. *But they must do this in the context of the times, ie of increasing Parliamentary intervention, and of the modern power of judicial review*. In my respectful opinion appeals to 18th century precedents of arbitrary action by Secretaries of State and references to general warrants do nothing to throw light on the issue. *Furthermore, while the courts may look critically at legislation which impairs the rights of citizens and should resolve any doubt in interpretation in their favour, it is no part of their duty, or power, to restrict or impede the working of legislation, even of unpopular legislation; to do so would be to weaken rather than to advance the democratic process*. (Emphasis added.)

In his judgment in the same case, Lord Diplock identified the two competing public interests involved in the case — detection and punishment of offences involving tax frauds; and upholding the right of the individual to his use and enjoyment of his property. What is relevant for the purpose of the instant appeal is the following observation by His Lordship, which reaffirmed the importance of giving effect to the plain words in a legislation:

> My Lords, all the events with which this appeal is concerned took place in the course of an investigation by officers of the Board of Inland Revenue into suspected criminal offences. Two competing public interests are involved; that offences involving tax frauds should be detected and punished; and that the right of the individual to the protection of the law from unjustified interference with his use and enjoyment of his private property should be upheld. What underlies the questions of law which this House must now determine is how those two competing, and at times conflicting, public interests can be reconciled under the new procedure for judicial review for which the RSC O 53 now provides.
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> ...
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> What has to be disclosed upon the face of the search warrant depends upon the true construction of the statute. The construing court ought, no doubt, to remind itself, if reminder should be necessary, that entering a man's house or office, searching it and seizing his goods against his will are tortious acts against which he is entitled to the protection of the court unless the acts can be justified either at common law or under some statutory authority. So if the statutory words relied upon as authorising the acts are ambiguous or obscure, a construction should be placed upon them that is least restrictive of individual rights which would otherwise enjoy the protection of the common law. *But judges in performing their constitutional function of expounding what words used by Parliament in legislation mean, must not be overzealous to search for ambiguities or obscurities in words which on the face of them are plain, simply because the members of the court are out of sympathy with the policy to which the Act appears to give effect.* (Emphasis added.)

[12] Thus in determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably supposed to have been the intention of the Legislature, that it is proper to look for some other possible meaning of the word or phrase. It is wrong and dangerous to proceed by substituting some other words for the words of the statute (see per Lord Reid in *Pinner v Everett* [1969] 3 All ER 257 at p 258).

[13] We are of the view that *Lee Kwan Woh* is not an authority directly on the point of the proper interpretation of s 30(3)(a) of the MACC Act or in support of the 'rights oriented approach' to interpretation used by the learned judge in the court below. *Lee Kwan Woh* concerns a drug trafficking case where at the close of the prosecution case, the learned trial judge ruled that he did not wish to hear submissions as he was satisfied that the prosecution had made out a prima facie case as required by s 180(1) of the Criminal Procedure Code. The accused in that case was eventually convicted and sentenced to death. This gave rise to the accused's first complaint in the Federal Court. Although s 180(1) of the Criminal Procedure Code does not confer the right for an accused person to make a submission of no case, his counsel submitted that the accused has a constitutionally guaranteed right to

a fair procedure by virtue of art 5(1) of the Federal Constitution, and that the ruling of the learned trial judge had violated that right. The Federal Court held that the constitutionally guaranteed right in an accused to a fair trial included his right to make a submission of no case at the close of the prosecution's case. He or she could not be deprived of it. As the accused in that case was deprived of it, he did not have a fair trial and art 5(1) of the Federal Constitution was violated. It is also significant to note that the Federal Court then went on to consider the second complaint of the accused — that the learned trial judge failed to judicially appreciate the evidence. The Federal Court then considered three evidential points which entailed assessment of the evidence given by three material witnesses for the prosecution. In the end, the Federal Court found that a reasonable tribunal properly directing itself on the applicable law and judicially appreciating the evidence, would have acquitted the accused at the close of the prosecution case. The Federal Court held that the failure of the learned trial judge to undertake a maximum or positive evaluation of PW3's, PW4's and PW8's evidence in that case had resulted in a substantial miscarriage of justice. The Federal Court therefore declined to accept the invitation by the prosecution to apply the proviso to s 92 of the Courts of Judicature Act 1964. We observed that at the end of its judgment the Federal Court said that quite apart from the constitutional point (the first complaint), the accused's conviction was plainly unsafe having regard to the facts and evidence as they stood at the close of the case for the prosecution, and that the learned trial judge clearly erred in the way he handled the facts and that in itself was sufficient ground for the appellate interference (the second complaint). It seems to us not clear therefore whether the accused would have been acquitted on the account of the failure of the learned trial judge to give the accused the right to make a submission of no case (the first complaint) alone, if the learned trial judge in that case had undertaken maximum evaluation of PW3's, PW4's, and PW8's evidence, and that if on the facts and the evidence in the case the accused's conviction was safe.

[14] In our judgment a better and more relevant authority on the crucial point of the interpretation of the legislation under consideration in the instant appeal is the more recent majority judgment of the Federal Court in *Tenaga Nasional Bhd v Ong See Teong & Anor* [2010] 2 MLJ 155. In that case, the Federal Court had to construe the word 'upgrading' in s 13 of the Electricity Supply Act 1990 (Act 447). The exercise of the power to carry out upgrading of the existing electrical installation by the appellant (Tenaga Nasional Bhd) thereunder affected one of the fundamental liberties provided under the Federal Constitution — ie the right to property of the respondents who were landowners and occupiers of the land affected by the upgrading works, and would cause hardship to them. The background facts leading to the filing of the case in court are these. Around 2005, the appellant decided to implement a project known as Central Area Reinforcement Project (CAR

project) to increase electricity supply to Kuala Lumpur and the Klang Valley. This was undertaken as a result of a severe electricity disruption on the 13 January 2005 which affected the central region of Peninsular Malaysia. To implement this project, a high voltage grid with a capacity of 270kV covering a distance of 60km from a place called Bukit Tarek to another known as Cudadak had to be installed. A section of the route for this grid runs through the new village along the same path as the existing 33kV transmission line. At the time the case was filed in court, the appellant had completed this project at both ends except for a 1.5km stretch through the new village. The owners and residents of the new village protested against this proposal and implementation. They attempted to persuade the appellant to find an alternative route. Unfortunately, after many meetings between the parties, political party representatives and the state authority, that request was turned down. Eventually, in June 2007, the appellant issued a notice pursuant to s 13 of Act 447 to the respondents, notifying the latter that the appellant intends to enter upon the said land which the appellant had installation, for the purpose of carrying out upgrading works on the transmission lines from 38kV to 275kV. Responding to that, the respondents filed an application for judicial review in the High Court praying for an order of certiorari to quash the appellant's decision in issuing the notice under s 13 of Act 447. Section 13 of Act 447 provides:

> Whenever it is necessary so to do for the purpose of maintaining, repairing or *upgrading* any licensed installation of any part thereof, the licensee, or any person authorized by him in that behalf, may at all reasonable times enter upon any land on, under or over which supply lines have been laid, placed or carried, or upon which posts or other equipment have been erected, and may carry out all necessary repairs, and may, in the course thereof, fell or lop trees, remove vegetation and do all other things necessary to the said purpose, causing as little damage as possible and paying full compensation in accordance with section 16 to all persons interested for any damage that may be caused thereby for which compensation has not already been assessed under section 11.

The Federal Court held that the word 'upgrading' thereunder must be given its natural and ordinary meaning as defined in the *Concise Oxford Dictionary*. The Federal Court held that in construing a provision in an Act, pursuant to s 17A of the Interpretation Acts 1948 and 1967 (Act 388), what must prevail was a construction that would promote the purpose of an Act. Speaking for majority of the Federal Court, Augustine Paul FCJ said:

> In order to ascertain whether the works carried out by the appellants amount to an 'upgrading' within the scope of s 13 of the Act it is first necessary to determine the meaning of the word. *It is defined in the Concise Oxford Dictionary as follows*:
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> > *1. Raise in rank etc. 2. Improve (equipment, machinery, etc.) esp. by replacing components.*

The word as defined refers to the raising in rank or improvement of equipment, machinery etc especially by replacing components, obviously for the purpose of better or increased performance. *However, the meaning does not appear to be subject to any limitation or qualification*. That may require a wide interpretation to be given to the word which may, needless to say, cause problems and hardship to some. The critical issue for determination is whether the word 'upgrading' in s 13 of the Act must be accorded this meaning even though it may result in individual hardship.

This raises the question of whether the meaning of the word 'upgrading' in s 13 of the Act is capable of being restricted in order to avoid the hardship. That brings into focus s 17A of the Interpretation Acts 1948 of 1967 ('s 17A') which reads as follows:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

It is thus abundantly clear that what must prevail is a construction that will promote the purpose of an Act.

[15] His Lordship then considered the purpose of Act 447 from its preamble and said:

> Thus the purpose of the Act is, inter alia, to ensure the supply of electricity at reasonable prices to the public at large. Where a purpose serves the general interest of the community it is a public purpose (see *S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204). As the purpose of the Act is to serve the interests of the public in the supply of electricity it is for a public purpose. *Where the public interest is involved the balance of convenience in favour of the public in general must be looked at more widely (see Tenaga Nasional Bhd v Dolomite Industrial Park Sdn Bhd [2000] 2 MLJ 133). Thus individual hardship that may arise in giving the necessary interpretation to a statutory provision cannot be a relevant matter for consideration*
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> ...
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> *It follows that s 13 of the Act must be read and understood in the context of the purpose for which it was enacted, that is to say, to serve the interests of the public in the supply of electricity at reasonable prices*. There can be no dispute that the need for electricity supply will increase from time to time with the rising population and industrial development. Advances in science and technology may help to maintain prices at a reasonable level in the supply of electricity. Such needs can be met only with changes in the electrical installations which can be even of very major nature. *The unqualified use of the word 'upgrading' in s 13 of the Act supports the view that an upgrading exercise can go to any extent. ... The result is that any restriction imposed in the meaning to be accorded to the word 'upgrading' in s 13 of the Act will conflict with the purpose of the Act in the supply of electricity to the public and thereby be in violation of s 17A*. (Emphasis added.)

A His Lordship concluded:

> I am therefore of the view that *the word 'upgrading'* in s 13 of the Act *must be given its natural and ordinary meaning as defined in the Concise Oxford Dictionary* to which reference has been made in an earlier part of this judgment. This meaning accords with the purpose of the Act.

B

[16] In *Saraswati v R* (1991) 100 ALR 193, commenting on the provision in the relevant Australian interpretation legislation (similar to s 17A of our Act 388), the Australian High Court said that it is always necessary in C determining the ordinary meaning of a provision of a legislation to have regard to the purpose of the legislation and the context of the provision as well as the literal meaning of the provision. In that case McHugh J speaking for the majority of the court said at p 207:

D
> Section 33 of the Interpretation Act directs a court in interpreting a provision in an Act to give preference to a construction 'that would promote the purpose or object underlying the Act' over a construction 'that would not promote that purpose or object': cf *Chugg v Pacific Dunlop Ltd* (1990) 170 CLR 249 at pp 261–262; 95 ALR 481. Moreover, the terms of s 34 of that Act, which provides for the use of extrinsic material, make it plain that 'the ordinary meaning conveyed E by the text of the provision' is the meaning conveyed by that provision after 'taking into account its context in the Act or statutory rule and the purpose or object underlying the Act or statutory rule'. *Hence, it is always necessary in determining 'the ordinary meaning' of a provision such as s 61E(2) to have regard to the purpose of the legislation and the context of the provision as well as the literal meaning of the* F *provision*. Sometimes the purpose of the legislation is expressly stated; sometimes it can be discerned only by inference after an examination of the legislation as a whole; and sometimes it can be discerned only by reference to the history of the legislation and the state of the law when it was enacted. It need hardly be said that a particular Act may have many purposes.
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> G In many cases, the grammatical or literal meaning of a statutory provision will give effect to the purpose of the legislation. Consequently, it will constitute the 'ordinary meaning' to be applied. If, however, the literal or grammatical meaning of a provision does not give effect to that purpose, that meaning cannot be regarded as 'the ordinary meaning' and cannot prevail. It must give way to the construction which will promote the underlying purpose or object of an Act: H Interpretation Act s 33. (Emphasis added.)

[17] Section 30(3) of the MACC Act provides that:

I *A person to whom an order has been given under paragraph (1)(a) shall —*

(a) *attend in accordance with the terms of the order to be examined, and shall continue to attend from day to day* where so directed until the examination is completed; and

(b) during such examination, *disclose all information* which is within his

knowledge, or which is available to him, in respect of the matter in relation to which he is being examined, and *answer any question put to him truthfully and to the best of his knowledge and belief, and shall not refuse to answer any question on the ground that it tends to incriminate him or his spouse*. (Emphasis added.)

The Bahasa Malaysia version of that section is as follows:

Seseorang yang telah diberi suatu perintah di bawah perenggan (1)(a) hendaklah —

(a) *hadir mengikut terma perintah itu untuk diperiksa*, dan *hendaklah terus hadir dari hari ke hari* jika diarahkan sedemikian sehingga pemeriksaan itu selesai; dan

(b) semasa pemeriksaan itu, *mendedahkan segala* maklumat yang diketahuinya, atau yang tersedia untuknya, berkenaan dengan perkara yang berhubungan dengannya dia diperiksa, dan *menjawab dengan benar dan setakat yang dia tahu dan percava apa-apa soalan yang dikemukakan kepadanya, dan tidak boleh enggan menjawab apa-apa soalan atas alasan bahawa iawapan itu dapat menunjukkan bahawa dia atau isteri atau suaminya bersalah*.

[18] The person referred to under that section is a person on whom an order under s 30(1)(a) has been given. So, in construing s 30(3)(a) of the MACC Act, it is necessary to consider s 30(1)(a) of the same Act. Both provisions must be read together. Section 30(1)(a) of the MACC Act provides:

An officer of the Commission investigating an offence under this Act *may* —

(a) *order any person to attend before him for the purpose of being examined orally* in relation to any matter which may, in his opinion, assist in the investigation into the offence.

The Bahasa Malaysia version of that section is as follows:

(1) Seseorang pegawai Suruhanjaya yang menyiasat sesuatu kesalahan di bawah Akta ini boleh —

(a) memerintahkan mana-mana orang supaya hadir di hadapannya bagi maksud diperiksa secara lisan berhubungan dengan apa-apa perkara yang mungkin dapat, pada pendapatnya, membantu dalam penyiasatan kesalahan itu.

[19] The provisions under ss 30(3)(a) and 30(1)(a) use the words '*person*', not 'witness' or 'suspect'. Indeed, the word 'person' is also used in ss 30(1)(b), 30(1)(c), 30(1)(d), 30(4), 30(5), 30(6), 30(7), 30(8), 30(9) and 30(10). In our view this is deliberate. 'Person' in s 30(1)(a) and 30(3)(a) includes witness and suspect. In other words, a person who may be ordered to attend pursuant

to s 30(1)(a), and who shall attend and shall continue to attend under s 30(3)(a) may be a witness and/or a suspect. Our view is fortified by the provision under s 30(3)(b) which provides that during the examination under s 30(3)(a), the person examined 'shall not refuse to answer any question on the ground that it tends to incriminate him or his spouse'. Our view is further reinforced by the provision under s 30(9) which provides that 'the record of an examination under paragraph (1)(a) ... shall, not withstanding any written law or rule of law to the contrary, be admissible in evidence in any proceedings in any court (a) for an offence under this Act, or (b) for the forfeiture of property pursuant to section 40 or 41, regardless whatever such proceedings *are against the person who was examined*, or who produced the book, document, record, account or computerized data, or article, or who made the written statement on oath or affirmation, or *against any other person*'. The provision in full is as follows:

> The record of an examination under paragraph (1)(a), or a written statement on oath or affirmation made pursuant to paragraph 1(c), or any book, document, record, account or computerised data, or article produced under paragraph (1)(b) or otherwise in the course of an examination under paragraph (1)(a), or under a written statement on oath or affirmation made pursuant to paragraph (1)(c), or record of examination of sample taken under paragraph (1)(d) shall notwithstanding any written law or rule of law to the contrary, be admissible in evidence in any proceedings in any court —
>
> (a) for an offence under this Act; or
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> (b) for the forfeiture of property pursuant to section 40 or 41,
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> *regardless whether such proceedings are against the person who was examined*, or who produced the book, document, record, account or computerized data, or article, or who made the written statement on oath or affirmation, *or against any other person*.

[20] Further, we are of the view that 'order' under s 30(1)(a) need not be in writing. There is no requirement under that section or anywhere in the MACC Act that the order thereunder must be in writing. Similarly, there is no requirement that 'order' under ss 30(1)(b) and 30(1)(d) must be in writing. We find support for our view from the language used in s 30(1)(c) of the MACC Act which specifically provides 'written notice' as the mode of ordering any person to furnish a statement on oath or affirmation setting out therein all such information which in the MACC officer's opinion would be of assistance in his investigation. No such mode is required under s 30(1)(a), (b) and (d) of the MACC Act. If the Legislature had intended that the order under s 30(1)(a), (b) and (d) as the case may be to be in writing, it could have easily used the words 'by written notice' before the word 'order' under those provisions. In our view, the omission of the words 'by written notice' or any word to the like effect from those provisions is deliberate. Thus, the order under s 30(1)(a) may be a verbal order.

[21] Section 30(3)(a) of the MACC Act consists of two parts. The first is 'a person to whom an order has been given under paragraph (1)(a) shall attend in accordance with the terms of the order to be examined,'. The second part is 'and shall continue to attend from day to day where so directed until the examination is completed'. Section 30(3)(a) is a necessary extension of s 30(1)(a). Section 30(1)(a) gives power to an officer of the MACC to order any person to attend before him for the purpose of being examined orally in relation to any matter which in his opinion may assist in the investigation. When an order is given under that provision, the first part of s 30(3)(a) creates a legal obligation on the person to whom the order (under s 30(1)(a)) has been given, to attend to be examined, according to the terms of the order. 'The terms of the order' includes the time during which that person must attend. The time is to be fixed by the MACC officer, and there is no restriction that he must fix it only during office hours. Then we have the second part of s 30(3)(a). It may or may not come into play. It will come into play when the MACC officer directs that the person who has attended as ordered (under the first part of s 30(3)(a)), to continue to attend from day to day until the examination is completed. In other words, the second part gives the MACC officer the power to direct that person to continue to attend from day to day until the examination is completed. During the examination under s 30(3)(a), the person examined shall disclose all information which is within his knowledge or which is available to him, and he shall answer any question put to him truthfully and he shall not refuse to answer any question on the ground that it tends to incriminate him or his spouse. This is provided by s 30(3)(b). Mandatory compliance with the order given under s 30(1)(a) of the MACC Act and the provision under s 30(3) of the Act, is reinforced by s 30(6) which provides that a person to whom an order or notice is given under s 30(1) shall comply with such order or notice and with s 30(3), 30(4) and 30(5), notwithstanding any written law or rule of law to the contrary. Non-compliance with the order under s 30(1)(a) or the provision of s 30(3), 30(4) or 30(5) is an offence under s 68 of the MACC Act. It is clear that there is nothing under s 30(1)(a) or any other provision in the MACC which provides that the power thereunder is restricted to ordering any person to attend for the purpose of being examined only during office hours. Similarly, there is nothing under s 30(3)(a) or any other provision in the MACC Act which provides that the person to whom an order has been given under s 30(1)(a) shall attend for the purpose of examination only during office hours. In fact, under both provisions there is no restriction as to the time within which the power to order attendance of person for examination can be exercised, and the time within which the person to be examined shall be required attend, as the case may be. In this connection, it is pertinent to refer to s 37 of Act 388 which provides for the time for exercise of power conferred by a written and performance of duty imposed by a written law. It does not restrict the time for the exercise of such power or the performance of such duty to only within office hours. It reads:

A Where a written law *confers any power* or *imposes any duty, the power may be exercised* and *the duty shall be performed from time to time as occasion requires*.

B **[22]** We have demonstrated the interplay between s 30(1)(a) of the MACC Act and s 30(3) of the same Act, and explained how the two sections works in harmony. In our view the combined effect of the interplay between the two provisions and s 37 of Act 388 is that an officer of the MACC investigating an offence may order any person to attend before him at any time, for the purpose of being examined orally in relation to any matter which may, in his C opinion, assist in the investigation into the offence. The person ordered to attend as such shall attend at such time and place as ordered by the officer of the MACC (the first part of s 30(3)(a) of the MACC Act). As we have said there is no restriction that that person must be ordered to attend only during office hours. The second part of s 30(3)(a) empowers an officer of the MACC D to direct the person who has attended pursuant to the first part of that section, to continue to attend from day to day until the examination is completed, and in such a case the latter shall continue attend as so directed. Again, there is no restriction that the 'from day to day' attendance must be within office hours only. Indeed, for the purpose of the MACC Act, s 9 of the E MACC Act provides that every officer of the MACC shall be deemed to be always on duty. 'From day to day' is not defined under the MACC Act or Act 388. According to *Shorter Oxford English Dictionary* (5th Ed) 'from day to day' means:

F continuously or without interruption from one day to another.

The same dictionary defines 'day' to mean 'the time from one rotation of the earth on its axis: the period of twenty-four hours as a unit of time, esp from midnight to midnight'. Thus, we cannot accept the interpretation of the learned judge in the court below that from day to day 'cannot mean an G unending 24 hour day, and that day' must relate to normal working hours. Indeed, to us it is clear that the ordinary meaning of the words 'from day to day' must be 'continuously or without interruption from one 24 hour day to another'. In his judgment the learned judge in the court below said:

H It is fair to conclude on the arguments presented before this court that the phrase 'day-to-day' raises an ambiguity. This court has to interpret that phrase so as to avoid an absurd result. The phrase admittedly is not defined anywhere in the MACC Act; such being the case, it is then permissible to explore the dictionary meaning of that phrase, which after all is a phrase of common currency. The 'legal' I meaning cannot be far removed from its ordinary meaning. The *Oxford Dictionary of English* (2nd Ed) defines the adverb 'day-to-day' as 'on a daily basis'. In the context of s 30(3)(a) of the MACC Act, this, with respect, is the proper meaning to be ascribed to that phrase. It cannot mean or connote the power or ability to conduct investigation round-the-clock. This is also the meaning to be ascribed to the forms of subpoena and their mention of 'day-to-day' until the end of the

proceedings. Since that phrase cannot mean an unending 24 hour day, 'day' must relate to normal working hours. In my opinion, this has to be the proper legislative purpose. Had Parliament intended otherwise, the phraseology would be different.

He said the *Oxford Dictionary of English* (2nd Ed) defines 'day to day' as 'on a daily basis'. He said in the context of s 30(3)(a) of the MACC Act, this (ie on a daily basis) is the proper meaning to be ascribed to 'day to day', and that it cannot mean or connote the power or ability to conduct investigation round-the-clock. He also said since the phrase cannot mean unending 24 hour day, 'day' must relate to normal working hours. With respect, we are unable to accept the reasoning of the learned judge. If 'day to day' means 'on a daily basis', where is it stated that 'on daily basis' means normal working hours, let alone the period between 8.30am to 5.30pm each day? The *Concise Oxford Dictionary of English* (11th Ed, Revised) defines 'daily' to mean 'every day'. The same dictionary defines 'day' to mean 'a twenty-four-hour period as a unit of time, reckoned from one midnight to the next and corresponding to a rotation of the earth on its axis', not 'normal working hours' which the learned judge concluded. It appears that the learned judge had read into s 30(3)(a) restriction which was not intended by the Legislature to be there. Suppose an offence under the MACC Act was committed at night and a report was lodged the same night. If the interpretation of the learned judge in the High Court was correct, the MACC had to wait until the morning (ie during office hours), provided that it was the morning of a working day, to start examining the complainant of the report and other witnesses. Similarly, if a report about the commission of an offence under the MACC Act was lodged after office hours on Saturday, for example, the MACC had to wait until Monday (during office hours) to begin examining witnesses and recording statements from them. That would be the position in the whole country except for the States of Kedah, Kelantan and Terengganu. In Kedah, Kelantan and Terengganu, following the learned judge's interpretation, if a report was lodged after office hours on Friday, for example, the MACC had to wait until Sunday (during office hours) to begin examining witnesses and recording statements from them. Take another example; suppose a report about an offence under the MACC Act was lodged in any part of Malaysia (other than Kedah, Kelantan and Terengganu) after office hours on a Friday which was followed by Saturday and Sunday (weekend off days) which were followed immediately by two consecutive days of public holidays (Monday and Tuesday), say for Chinese New Year. If the interpretation of the learned judge in the court below was correct, the MACC had to wait until Wednesday (during office hours) to begin examining witnesses and recording statements from them. In our view the interpretation made by the learned judge in the court below is not only absurd but does not promote the purpose of the MACC Act.

[23] This bring us to s 17A of Act 388 which provides that in the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object (see also *Tenaga National Bhd v Ong See Tiong*). The purpose of the MACC Act can be gathered from the long title to the Act which is as follows:

> An Act to provide for the establishment of the Malaysian Anti-Corruption Commission, to make further and better provisions *for the prevention of corruption* and for matters necessary thereto and connected therewith.

So, the purpose of the MACC Act is to make further and better provisions for the prevention of corruption, in respect of which the detection and investigation of offences under the MACC Act and bringing persons accused of any such offences to justice is clearly an inseparable intended object. In fact, according to learned counsel for the respondent, the purpose of the MACC Act was 'to rid the country of the scourge of corruption'. For this purpose, Part V of the MACC Act makes provisions for investigation, search, seizure and arrest. Section 30 which comes under Part V, provides for a very essential and vital means of investigation — power to examine and record statements from persons who may assist in investigation. As we will show shortly, to achieve its purpose this power must be exercised promptly.

[24] Under the law, the investigator is enjoined upon to unearth the crime and *as soon as he receives the information about the crime*, he is to proceed to the spot, ascertain the facts and circumstances of the case and arrest the suspected offender, collect the evidence relating to the commission of the offence, examine various persons including the accused, reduce their statements into writing, to search the places and take into possession the things considered necessary for the investigation and to be produced at the trial (see *Amrik Singh v The State of Punjab* 1983 Cri LJ 1405). In this regard, the promptness in investigation of serious offences including, in our view, those under the MACC Act, is of utmost importance. In *Krishnamurthi's Police Diaries, Statements, Reports, Investigations, Prosecution, Arrest etc*, (7th Ed) at pp 636–637, the learned author, commenting on the duty of an investigation officer to record statement of witnesses at the earliest opportunity observed:

> *The investigating officer must record the statements of eyewitnesses of the occurrence at the earliest opportunity, after the registration of the case at the police station* and if he deliberately defers to record their statements for considerable long period after reaching the place of occurrence and keeps himself busy in trivial matters, the evidentiary value of the statements of witnesses so recorded subsequently is much diminished so much so that even the presence of such witnesses at the place of occurrence becomes doubtful as the complainant gets an opportunity to procure

witnesses during the interval, in support of his case. To ensure confidence, the investigation must be above board. *It must be prompt, fair, and impartial. If the investigating officer deliberately avoids to record the statements of eyewitnesses with promptness, the investigation becomes suspect and tainted and it does not inspire confidence at all and the noble purpose of investigation becomes frustrated* (*Raju v State* 1984 All LJ 1284 at p 1288).

[25] The following remark of the Supreme Court of India in *GB Patel v State of Maharashtra* AIR 1979 SC 135 at pp 138–139 also clearly illustrates the necessity of recording statements of witnesses at the earliest opportunity:

As noted by the trial court, one unusual feature which projects its shadow on the evidence of P Ws Welji, Pramila and Kuvarbai and casts a serious doubt about their being eye witnesses of the occurrence, is the undue delay on the part of the investigating officer in recording their statements. Although these witnesses were or could be available for examination when the investigating officer visited the scene of occurrence or soon thereafter, their statements under s 161 Cr PC. were recorded on the following day, Welji (PW3) was examined at 8am, Pramila at 9.15 or 9.30am and Kuvarbai at 1pm. *Delay of a few hours, simpliciter in recording the statements of eye witnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye witnesses to be introduced.*

[26] Delay in making a statement is dangerous, and if a person who is an important witness does not open his mouth for a long time his evidence is always looked upon with suspicion (see *Kehar Singh v State (Delhi Administration)* (1988) 3 Supreme Court Cases 609 at p 623 per Oza J). Thus, prompt interrogation lends assurance to the court about the credibility of a witness and goes a long way to dispel any doubt in the mind of the court about a witness being a got up (see *Janardhan Ragho Mhatre v State of Maharastra* 1996 Cr LJ 4180 at p 4184 (Bom)). The need to carry out prompt and unimpeded investigation is recognised by the Federal Court in *Ooi Ah Phua v Officer-in-Charge Criminal Investigation, Kedah/Perlis* [1975] 2 MLJ 198 and *Hashim bin Saud v Yahaya bin Hashim & Anor* [1977] 2 MLJ 116. In *Ooi Ah Phua*, the Federal Court held that the right of an arrested person under art 5(3) of the Federal Constitution to consult his lawyer begins from the moment of his arrest, but that right could not be exercised immediately upon arrest. Speaking for the court Suffian LP said:

With respect I agree that the right of an arrested person to consult his lawyer begins from the moment of arrest, but I am of the opinion that that right cannot be exercised immediately after arrest. A balance has to be struck between the right of the arrested person to consult his lawyer on the one hand and on the other the duty of the police to protect the public from wrongdoers by apprehending them and collecting whatever evidence exists against them. The interest of justice is as important as the interest of

arrested persons and it is well-known that criminal elements are deterred most of all by the certainty of detection, arrest and punishment.

With respect I agree with the view of Bhide J in *Sundar Singh v Emperor* who said at p 947:

> *The right of a prisoner to have access to legal advice must of course be subject to such legitimate restrictions as may be necessary in the interests of justice in order to prevent any undue interference with the course of investigation*. For instance a legal adviser cannot claim to have interviews with a prisoner at any time he chooses. (Emphasis added.)

CONCLUSION

[27] In concluding that an officer of the MACC could only record a statement of a witness during office hours, namely 8.30am to 5.30pm each, the learned judge in the court below had read into s 30(3)(a) a restriction which is not intended to be there. With respect, such a construction was contrary to the established canon of construction and was in conflict with the purpose of the MACC Act, and thereby violating the provision under s 17A of Act 388. To recapitulate, for reasons which we have set out at length, we are of the view that s 30(3)(a) of the MACC Act must be given its natural and ordinary meaning which we have explained earlier. When so read, there is no restriction as to the time during which examination and the recording of statement from a person including a witness pursuant to s 30(3)(a) of the MACC Act, can be done. There is no restriction that the examination of a person pursuant to s 30(3)(a) of the MACC Act and the recording of statement from such person thereunder by the MACC officer must only be done during office hours. Examination of a person pursuant to s 30(3)(a) of the MACC Act and the recording of his or her statement thereunder may be done at any time as the occasion arises. This construction is to our mind the construction which would promote the purpose of the MACC Act. Thus, the appellant had not acted in contravention of s 30(3)(a) of the MACC Act.

[28] At the end of his submission, learned SFC contended that the appellants were protected from the suit in the present appeal by virtue of s 72 of the MACC Act. He argued that there was no evidence to show that any MACC officer had required the attendance of the respondent to assist in investigation other than in good faith. In response, learned counsel for the respondent objected to the point taken by learned SFC regarding s 72 of the MACC Act on the ground that that point was never taken up in the court below. In any event, learned counsel for the respondent submitted that the burden was on the appellants to establish the defence of good faith. In support of his submission he relied on the High Court decision in *E Gopal & Anor v Awang bin Mona* [1978] 2 MLJ 251. Learned counsel contended

that there was nothing in the affidavit filed by the appellants to show good faith. In reply, learned SFC argued that in paras 6 and 8 of their affidavit in reply, the appellants stated that they acted in accordance with the MACC Act. Section 72 of the MACC Act provides:

> No action, suit, prosecution or other proceedings whatsoever shall lie or be brought, instituted, or maintained in any court or before any other authority against —
>
> (a) the Government of Malaysia;
>
> (b) any officer or employee of the Government of Malaysia or of the Commission;
>
> (c) any member of the Advisory Board or the Special Committee or any other committee established under or for the purposes of this Act; or
>
> (d) any person lawfully acting on behalf of the Government of Malaysia, Commission, officer or employee of the Government of Malaysia or Commission,
>
> for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance or in execution of, or intended pursuance or execution of this Act, or any order in writing, direction, instruction, notice or other thing whatsoever issued under this Act:
>
> Provided that such act or such statement was done or made, or was omitted to be done or made, in good faith.

That provision provides immunity to any officer of the MACC and, any other person specified thereunder against any suit, action, prosecution or proceeding in any court in respect of any act etc done in the execution of the MACC Act, provided that such act was done in good faith. However, in view of our finding that the appellants had not acted in contravention of s 30(3)(a) of the MACC Act, it is not necessary for us to rule on the applicability of s 72 of the MACC Act.

[29] In the upshot, the appellants' appeal is allowed with costs here and below. The orders of the High Court are set aside.

Appeal allowed with costs here and below.

Reported by Andrew Christopher Simon